

From: Bailey, Dean [DBailey@sweetser.org]

Sent: Tuesday, November 23, 2010 1:06 PM

To: Keenan, Arthur

Subject: RE: November 9 comments; need for your vote

Having gone through the rule making process a number of times, I would opt for Option 2. Have at least two more stakeholder meetings with very specific goals. You may want to break them up into different groups by subject matter. Whatever you do, you do not want to appear to give up DOE's control to draft the rules for the APA process. Option 1 is a crazy process and may only result in more discord.

There are a couple of other things I would like to raise.

1. The Elephant in the room is who is in charge here. I heard from several people throughout the day that "the state has no business telling me how to run my district." That issue needs to be dealt with first before people can concentrate on the specifics of behavioral management. I would suggest that the issue of behavioral management rises above the issues of local interest. This is so important; it can only be managed from a State level. At OCFS we had it easy. We paid the bills; therefore we could take control of this issue. Only with central oversight with a central database that is queried for schools that are overusing restraint can you assure that all Maine children will be safe in our schools.
2. I have had trouble finding the rules on suspension and expulsion for the general student population. I am aware of the rules for special education students. Is this entirely a local issue, with each district creating its own rules? At Sweetser we are often referred adolescents who have been expelled from school and for whom there seems to be no recourse. As with all residential programs, taking these students requires extra expense since we have to fund supervision during what would be the school day. Is this committee going to address the standards for expulsion and a possible way back for students?

Dean Bailey
Sweetser

From: Keenan, Arthur [mailto:Arthur.Keenan@maine.gov]

Sent: Tuesday, November 23, 2010 11:34 AM

To: Eric Herlan; amarche@scarborough.k12.me.us; asm@asmonline.org; barbara.gunn@rsu34.org; brobbins12@aol.com; cgalgay@nea.org; chorne@namimaine.org; Cronin, Nancy E; Bailey, Dean; dblbean@roadrunner.com; ddurost@mpa.cc; douglass@msmaweb.com; dsmith@drcme.org; fmccabe@midcoast.com; frank_sherburne@fc.sad57.k12.me.us; gilmer@maine.edu; jadams@madsec.org; jbell@MaineDDC.org; jepsos@portlandschools.org; jherb@maine.r.com; jkimball@woodfords.org; jlachance@mpf.org; jleach@childrenscenteraugusta.com; mdegan@mpf.org; nattiejanes@hotmail.com; pmakin@windham.k12.me.us; ront@namimaine.org; smacarthur@msmaweb.com; whiteb@rsu5.org

Cc: Friedman, Deborah; Braff, Jonathan; Connolly, Nancy; Dube, Nancy; Hannigan, Debra; Kastuck, Edwin; Keenan, Arthur; Lamontagne, Pauline; Moody, Barbara; Newton, Ansley; Spear, Steve

Subject: November 9 comments; need for your vote

Importance: High

To all stakeholders:

Thank you again for attending the November 9 meeting, and giving us your opinions on Ch. 33 as well as your opinions on this review process.

Attached are all of your comments that were written on all of the flip charts.

Also attached is our summary of the ideas sent to us via email.

The following requires your urgent reply, as is explained in the final paragraph.

At the end of the stakeholder meeting on November 9th, some members of the group expressed a desire to have additional input into the drafting of a revision to the Chapter 33 rules. One option mentioned was a consensus-based rulemaking process, and another was additional stakeholder meetings.

We are writing to seek input from the stakeholders on how to proceed, and set forth below 3 options. The options present somewhat different balances between the urgency of improving this rule for the safety of our children, and the desire for additional stakeholder input.

Please respond to this email and let us know which of the 3 options below you prefer. With each option, we have given our best guess as to the time frame within which we could get a proposed rule to the Commissioner for her consideration.

Option One:

Consensus Based Rulemaking

Consensus-based rulemaking would take place under the provisions of Title 5, section 8051-B. In general, the process has to be well-documented and transparent. We would propose a specific number of meetings (probably 3, spaced 3 or 4 weeks apart), and would work to ensure that the meetings are productive and create as much consensus as possible. In the CBR process,

- DOE is required to select a representative group of participants in the process, but to make information available to any interested party
- Ground rules for the process must be mutually agreeable to the parties
- DOE must distribute a summary and submitted materials from all meetings to the participants and interested parties
- The agency has the ultimate responsibility and discretion over whether to submit the rule developed in CBR as a proposed rule and as to the final language of the proposed rule
- If a proposed rule results from the CBR process, DOE must maintain a list of all meetings, the participants and the interests or organizations they represent; a summary of each meeting; and a description of the process, the extent to which consensus was reached and an analysis of the decisions resulting from the process

Pros

Provides a clear process for proceeding; allows parties to discuss wording of a potential rule

Provides equal notice to all participants and equal opportunity to share

Cons

Extends the timeline for completion – would probably result in a proposed rule draft to the Commissioner by the end of March

Parties may not be able to reach consensus on all issues

Option Two:**Additional stakeholder meetings**

One or more additional stakeholder meetings could be held to discuss various aspects of the rule, with the number of meetings determined with input from stakeholders. We would be constrained, however, by limitations of the rulemaking process – we can't write a new rule at these meetings without being subject to a potential legal challenge.

Pros**Cons**

More opportunities for stakeholder input	Timing to complete the rule depends on the number of additional meetings – possibly end of February or early March
Less formal than CBR	Doesn't allow for drafting actual language

Option Three:**One additional stakeholder meeting; DOE draft rule and hold public hearing in the rulemaking process**

One additional stakeholder meeting could be held to review a potential outline of rule changes, based on information collected from various stakeholder groups and individuals by email and the November 9th meeting. The DOE Chapter 33 staff working group would then propose a rule that would go through the rulemaking process

Pros**Cons**

Allows some additional input, but has a shorter timeline – possibly resulting in a proposed rule by end of January	Fewer meetings where parties can discuss with each other
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Please respond to this email with your choice, Option 1 or Option 2 or Option 3 by Wednesday, December 1st by 5:00 p.m. If we don't hear from you, we will assume that you do not have a preference and would be satisfied with any of the options.

Thank you.

Maine DOE Chapter 33 Workgroup

By Arthur Keenan

This email is sent by an attorney and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the email and any attachments and notify me immediately.

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